

CLERK U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIF.
 SANTA ANA

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 BY:

FILED

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 4 Attorney for Plaintiff,
 ROBERT CALDER

5

UNITED STATES DISTRICT COURT
 6 CENTRAL DISTRICT OF CALIFORNIA
 7 SOUTHERN DIVISION

8 ROBERT CALDER,) Case No.: SACV09-1467 JVS (RNBx)

9 Plaintiff,) COMPLAINT AND DEMAND FOR

10 v.) JURY TRIAL

11 KIMBALL, TIREY & ST. JOHN,) (Unlawful Debt Collection Practices)

12 Defendant.)

13

VERIFIED COMPLAINT

14

15 ROBERT CALDER (Plaintiff), by his attorneys, KROHN & MOSS, LTD., alleges the

16 following against KIMBALL, TIREY & ST. JOHN, (Defendant):

17

INTRODUCTION

- 18 1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, *15*
- 19 *U.S.C. 1692 et seq.* (FDCPA).
- 20 2. Count II of the Plaintiff's Complaint is based on Rosenthal Fair Debt Collection
- 21 Practices Act, *Cal. Civ. Code §1788 et seq.* (RFDCPA).

22

JURISDICTION AND VENUE

- 23 3. Jurisdiction of this court arises pursuant to *15 U.S.C. 1692k(d)*, which states that such
- 24 actions may be brought and heard before "any appropriate United States district court
- 25 without regard to the amount in controversy," and *28 U.S.C. 1337* grants this court supplemental jurisdiction over the state claims contained therein.

4. Defendant conducts business and is located in the state of California, and therefore, personal jurisdiction is established.
 5. Venue is proper pursuant to *28 U.S.C. 1391(b)(2)*.
 6. Declaratory relief is available pursuant to *28 U.S.C. 2201 and 2202*.

PARTIES

7. Plaintiff is a natural person residing in Mission Viejo, Orange County, California.
 8. Plaintiff is a consumer as that term is defined by 15 U.S.C. 1692a(3), and according to Defendant, Plaintiff allegedly owes a debt as that term is defined by 15 U.S.C. 1692a(5) and Cal. Civ. Code § 1788.2(h).
 9. Defendant is a debt collector as that term is defined by 15 U.S.C. 1692a(6) and Cal. Civ. Code §1788.2(c), and sought to collect a consumer debt from Plaintiff.
 10. Defendant is a national company with its headquarters in San Diego, San Diego County, California.
 11. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

12. Defendant constantly and continuously places collection calls to Plaintiff seeking and demanding payment for an alleged debt.
 13. Defendant calls Plaintiff from telephone number (800) 575-1770.
 14. Defendant places telephone calls without meaningful disclosure of the caller's identity.
 15. Defendant fails to disclose in subsequent communications that the call is from a debt collector.

COUNT I

DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

16. Defendant violated the FDCPA based on the following:

- a. Defendant violated §1692c(a)(1) of the FDCPA by communicating with Plaintiff in connection with the collection of a debt at a time or place known or which should be known to be inconvenient to Plaintiff.
 - b. Defendant violated §1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress, or abuse the Plaintiff in connection with the collection of a debt.
 - c. Defendant violated §1692d(5) of the FDCPA by causing a telephone to ring repeatedly and continuously with the intent to annoy, abuse, and harass Plaintiff.
 - d. Defendant violated §1692d(6) of the FDCPA by placing telephone calls without meaningful disclosure of the caller's identity.
 - e. Defendant violated §1692e(11) of the FDCPA by failing to disclose in subsequent communications that the communication was from a debt collector.

WHEREFORE, Plaintiff, ROBERT CALDER, respectfully requests judgment be entered against Defendant, KIMBALL, TIREY & ST. JOHN, for the following:

17. Declaratory judgment that Defendant's conduct violated the Fair Debt Collection Practices Act,
 18. Statutory damages of \$1000.00 pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*,
 19. Actual damages,
 20. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*
 21. Any other relief that this Honorable Court deems appropriate.

COUNT II
**DEFENDANT VIOLATED THE ROSENTHAL FAIR DEBT COLLECTION
PRACTICES ACT**

22. Plaintiff repeats and realleges all of the allegations in Count I of Plaintiff's Complaint as the allegations in Count II of Plaintiff's Complaint.

23. Defendant violated the RFDCPA based on the following:

- a. Defendant violated §1788.11(b) of the RFDCPA by placing telephone calls without disclosure of the caller's identity.
 - b. Defendant violated §1788.11(d) of the RFDCPA by causing Plaintiff's telephone to ring repeatedly and continuously so as to annoy Plaintiff.
 - c. Defendant violated §1788.11(e) of the RFDCPA by placing collection calls to Plaintiff with such frequency that was unreasonable and constituted harassment.
 - d. Defendant violated the §1788.17 of the RFDCPA by continuously failing to comply with the statutory regulations contained within the FDCPA, 15 U.S.C. § 1692 et seq.

WHEREFORE, Plaintiff, ROBERT CALDER, respectfully requests judgment be entered against Defendant, KIMBALL, TIREY & ST. JOHN, for the following:

24. Declaratory judgment that Defendant's conduct violated the Rosenthal Fair Debt Collection Practices Act,
 25. Statutory damages of \$1000.00 pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal. Civ. Code §1788.30(b)*,
 26. Actual damages,
 27. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collection Practices Act, *Cal. Civ Code § 1788.30(c)*, and
 28. Any other relief that this Honorable Court deems appropriate.

1 **DEMAND FOR JURY TRIAL**

2 PLEASE TAKE NOTICE that Plaintiff, ROBERT CALDER, demands a jury trial in this
3 case.

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5

6

7 RESPECTFULLY SUBMITTED,

8 DATED: December 8, 2009

9 KROHN & MOSS, LTD.

10 By: _____

11 Michael S. Agruss
12 Attorney for Plaintiff

1
2 **VERIFICATION OF COMPLAINT AND CERTIFICATION**

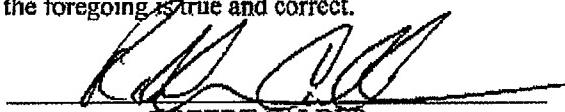
3 (STATE OF CALIFORNIA)

4 Plaintiff, ROBERT CALDER, states as follows:

- 5 1. I am the Plaintiff in this civil proceeding.
6 2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe
7 that all of the facts contained in it are true, to the best of my knowledge, information
8 and belief formed after reasonable inquiry.
9 3. I believe that this civil Complaint is well grounded in fact and warranted by existing
10 law or by a good faith argument for the extension, modification or reversal of existing
11 law.
12 4. I believe that this civil Complaint is not interposed for any improper purpose, such as
13 to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a
14 needless increase in the cost of litigation to any Defendant(s), named in the
15 Complaint.
16 5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
17 6. Each and every exhibit I have provided to my attorneys which has been attached to
18 this Complaint is a true and correct copy of the original.
19 7. Except for clearly indicated redactions made by my attorneys where appropriate, I
20 have not altered, changed, modified or fabricated these exhibits, except that some of
21 the attached exhibits may contain some of my own handwritten notations.

22 Pursuant to 28 U.S.C. § 1746(2), I, ROBERT CALDER, hereby declare (or certify,
23 verify or state) under penalty of perjury that the foregoing is true and correct.

24 DATE: 12-8-09



ROBERT CALDER

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself)
 ROBERT CALDER

DEFENDANTS
 KIMBALL, TIREY & ST. JOHN

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Krohn & Moss, Ltd.; Michael S. Agruss, Esq.
 10474 Santa Monica Blvd., Suite 401; Los Angeles, CA 90025
 (323) 988-2400

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
 (Place an X in one box for plaintiff and one for defendant.)

- | | | | | |
|---|----------------------------|----------------------------|----------------------------|----------------------------|
| Citizen of This State | PTF | DEF | PTF | DEF |
| | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| | | | Foreign Nation | |

IV. ORIGIN (Place an X in one box only.)

- 1 Original 2 Removed from 3 Remanded from 4 Reinstated or 5 Transferred from another district (specify): 6 Multi-District Litigation 7 Appeal to District Judge from Magistrate Judge
 Proceeding State Court Appellate Court Reopened

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No

MONEY DEMANDED IN COMPLAINT: \$ _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

15 USC 1692 et seq.; Unlawful and Abusive Debt Collection Practices

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL PROPERTY	BANKRUPTCY	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/ Other	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input checked="" type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE / PENALTY	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/ Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark SOCIAL SECURITY
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 861 HIA (1395ft)
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 891 Agricultural Act		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 863 DIWC/DIWV (405(g))
<input type="checkbox"/> 892 Economic Stabilization Act		<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 660 Occupational Safety /Health	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 893 Environmental Matters		<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 894 Energy Allocation Act		<input type="checkbox"/> 465 Other Immigration Actions			FEDERAL TAX SUITS
<input type="checkbox"/> 895 Freedom of Info. Act					<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice					<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 950 Constitutionality of State Statutes					
	REAL PROPERTY	IMMIGRATION			
	<input type="checkbox"/> 210 Land Condemnation				
	<input type="checkbox"/> 220 Foreclosure				
	<input type="checkbox"/> 230 Rent Lease & Ejectment				
	<input type="checkbox"/> 240 Torts to Land				
	<input type="checkbox"/> 245 Tort Product Liability				
	<input type="checkbox"/> 290 All Other Real Property				

SACV09-1467 JVS(RNBX)

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District: Orange County (CA)	California County outside of this District; State, if other than California; or Foreign Country
--	---

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District: San Diego County (CA)	California County outside of this District; State, if other than California; or Foreign Country
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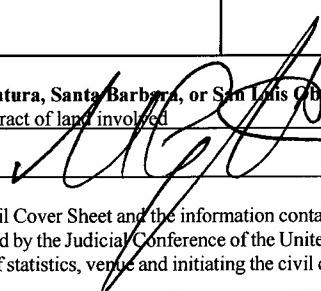
(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District: Orange County (CA)	California County outside of this District; State, if other than California; or Foreign Country
--	---

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date December 8, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge James V. Selna and the assigned discovery Magistrate Judge is Robert N. Block.

The case number on all documents filed with the Court should read as follows:

SACV09 - 1467 JVS (RNBx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

FOR OFFICE USE ONLY**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ROBERT CALDER	CASE NUMBER
v. PLAINTIFF(S)	SACV09-1467 JVS(RNBX)
KIMBALL, TIREY & ST. JOHN DEFENDANT(S).	SUMMONS

TO: DEFENDANT(S): KIMBALL, TIREY & ST. JOHN**FOR OFFICE USE ONLY**

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Michael S. Agruss, whose address is Krohn & Moss, Ltd.; 10474 Santa Monica Blvd., Suite 401; Los Angeles, CA 90025. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

DEC 11 2009
Dated: _____By: _____
Deputy Clerk**NANCY CASTRO SEAL**

(Seal of the Court)

[Use 60 days if the defendant is the United States, a United States agency, or a officer or employee of the United States. Allowed 60 days by Rule 12(a)(3).]

FOR OFFICE USE ONLY